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7                          IN THE UNITED STATES DISTRICT COURT  
8                          FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10                          D. L. TAYLOR, C-05467,                          )  
11                          Plaintiff(s),                          ) No. C 12-3424 CRB (PR)  
12                          vs.    ) ORDER OF DISMISSAL WITH  
13                          G. D. LEWIS, et al.,                          ) LEAVE TO AMEND  
14                          Defendant(s).                          ) (Docket # 12)  
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16                          Plaintiff, a prisoner at Pelican Bay State Prison (PBSP), has filed a pro se  
17 Second Amended Complaint (SAC) under 42 U.S.C. § 1983 claiming various  
18 violations of his constitutional civil rights. Plaintiff specifically alleges that  
19 defendants "assaulted" him on more than one occasion, asked other prisoners to  
20 harm him and denied him medical care. Plaintiff adds little else, however.

21                          In a recent motion for injunctive relief, plaintiff also requests an order  
22 compelling defendants to reinstate his religious diet and to return improperly  
23 confiscated books.

24                          **DISCUSSION**

25                          A.            Standard of Review

26                          Federal courts must engage in a preliminary screening of cases in which  
27 prisoners seek redress from a governmental entity or officer or employee of a  
28 governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint  
 2 "is frivolous, malicious, or fails to state a claim upon which relief may be  
 3 granted," or "seeks monetary relief from a defendant who is immune from such  
 4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.  
 5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
 7 elements: (1) that a right secured by the Constitution or laws of the United States  
 8 was violated, and (2) that the alleged violation was committed by a person acting  
 9 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 It is well-established that allegations that prison officials used force  
 12 maliciously and sadistically to cause harm, rather than in a good-faith effort to  
 13 maintain or restore discipline, state a cognizable claim under § 1983 for violation  
 14 of the Eighth Amendment right to be free of cruel and unusual punishment. See  
 15 Hudson v. McMillian, 503 U.S. 1, 6 (1992). And it is equally well-established  
 16 that allegations that prison officials were deliberate indifferent to a prisoner's  
 17 health and safety concerns also state a cognizable Eighth Amendment claim  
 18 under § 1983. See Farmer v. Brennan, 511 U.S. 825, 832, 837 (1994) (prison  
 19 official deliberately indifferent only if he knew of and disregarded an excessive  
 20 risk to inmate health or safety).

21 Plaintiff's conclusory allegations will be dismissed with leave to amend to  
 22 set forth specific facts showing how defendants used force maliciously and  
 23 sadistically to cause him harm, and/or were deliberately indifferent to plaintiff's  
 24 health or safety concerns, if possible. Plaintiff must also link each named  
 25 defendant with his allegations of wrongdoing so as to show how each defendant  
 26 actually and proximately caused the deprivation of his federal rights of which he  
 27

1 complains. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

2 **CONCLUSION**

3 For the foregoing reasons, the SAC is DISMISSED with leave to amend,  
4 as indicated above, within 30 days of this order. The pleading must be simple  
5 and concise and must include the caption and civil case number used in this order  
6 and the words THIRD AMENDED COMPLAINT (TAC) on the first page.  
7 Failure to file a proper TAC within the designated time will result in the  
8 dismissal of this action.

9 Plaintiff's recent motion for injunctive relief (docket # 12) is DENIED.  
10 But plaintiff is free to set forth specific facts in his TAC showing how defendants  
11 failed to provide him a healthy diet conforming to his sincere religious beliefs  
12 and/or improperly confiscated his books. Plaintiff must also link each named  
13 defendant with his allegations of wrongdoing.

14 Plaintiff is advised that the TAC will supersede the original complaint and  
15 all other pleadings. Claims and defendants not included in the TAC will not be  
16 considered by the court. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).  
17 SO ORDERED.

18 DATED: June 13, 2013

  
19 CHARLES R. BREYER  
United States District Judge

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